



## WATER QUALITY / QUANTITY COMMITTEE (QQ)

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### QQ Quarterly Board Meeting

Thursday, March 3, 2015

Blue River Meeting Room, North Summit County Library  
651 Center Cir., Silverthorne, CO

### AGENDA

- 10:00 Welcome and Introductions
- 10:05 Land Use Planning and Water Planning in the Headwaters Panel. *Kevin Reidy, CWCB, Kelly Romero-Heaney, City of Steamboat Springs, Mark Fuller, Ruedi Water and Power Authority.*
- 11:30 QQ Org. Discussions re: Board Chair, summer meeting plans
- 11:45 Lunch
- 12:45 Member updates
- 1:00 Oil & Gas Update- *Barbara & Torie*
- 1:15 Water Quality (Basic Standards Rulemaking, SMPs, Grand Lake Clarity) *Lane & Seth*
- 2:15 2016 Legislative Session- *Torie & Barbara*
- 3:00 Adjourn



# 6.3.3

## LAND USE

“Every community can do better on water conservation and efficiency via locally determined measures, such as, but not limited to, reinvestment in aging infrastructure, community education, enhanced building codes, and water-sensitive land-use planning.” Guiding statement from county commissioners, as submitted in their input document regarding Colorado’s Water Plan.<sup>194</sup>

As Colorado grows, land-use planning and water planning will become more closely connected through the integration of several principles. Integration does not mean dilution of local control. Connecting these planning disciplines will not diminish private property rights, 1041 powers, and local zoning and development control. Financial incentives, best practices, partnerships, and technical resources can potentially better coordinate and enhance land-use planning and water planning. While density will be a major factor in reducing urban water demand, it is but one facet of creating more water-sensitive land-use decisions.

The manner in which Colorado develops into the future will have a strong influence on Colorado’s future water supply gap, and vice versa. This topic is relevant today, as illustrated by the fact that six boards of county commissioners representing both the eastern and western slopes, including Boulder, Denver, Eagle, Grand, Pitkin, and Summit Counties, as well as elected officials from the City and County of Broomfield, collaborated to craft comments about land-use-water integration for Colorado’s Water Plan. The importance of water-sensitive land-use planning was stated as, “1. Decrease the water supply gap. As Colorado’s population continues to grow, well thought out, effective, sustainable, and predictable land-use planning is essential. 2. Provide low cost alternatives for meeting the Gap. Water sensitive land-use often results in less stress on water systems, indoor and outdoor water savings, and reduction in expensive long-term capital outlay. 3. Protect the values of Colorado, including vibrant economies, agriculture, open space, and recreation. Local land-use planning should be among the first points of consideration to protect and support all of Colorado’s values and economic drivers. 4. Create more predictability and reliability as well as reduce risk in water supply planning, in turn creating more sustainability for current and future residents. 5. Encourage shared solutions including best management practices, collaborative physical projects and practical land-use models to address water quality and quantity challenges. 6. Result in benefits that reduce infrastructure and service costs, and enhance a community’s quality of life.”<sup>195</sup>

In 2009, the CWCB began preliminary work in this arena by hosting the *Water and Land Use Planning for a Sustainable Future* conference, and in 2010, it created an associated report and density memo describing several actions that bridge land and water issues.<sup>196</sup> Recently, urban land use has been a major discussion point at the IBCC, which incorporated several options into the Water Conservation No-and-Low-Regrets Action Plan. Additionally, at the July 24, 2013 Joint Front Range Roundtable meeting, 92 percent of participants strongly agreed or agreed with the recommendation that water supply planning and land-use planning should be coordinated. At that same meeting, 55 percent of participants agreed that “coordination of urban land planning and water supply planning” was the most important conservation recommendation to discuss that day.<sup>197</sup>

The following projects and initiatives illustrate these recommendations—and are being pursued in Colorado today.

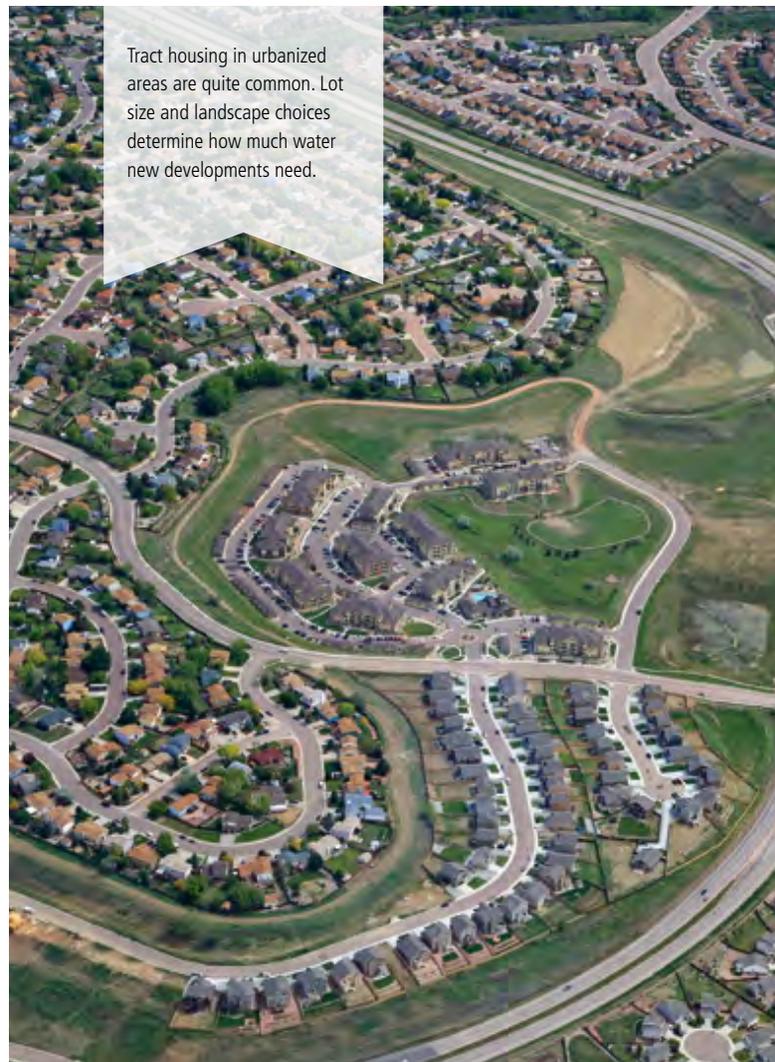
### Net-Zero Water Initiative

The Colorado Water Innovation Cluster is researching net-zero water through a CWCB water efficiency grant, and has assembled a large stakeholder group to create a net-zero water planning template, guidebook, and toolkit.<sup>198</sup> Net-zero water is a water management concept that mitigates effects on water quantity and quality through best practices, which are incorporated into the development or management of a site. While not truly a net-zero strategy, the best practices can result in a water-neutral site. Net-zero water strategies can be applied to a building site or on a more regional scale, and connect water management to land-use planning. The Net Zero Water Planning Template, as well as the guidebook and toolkit, will help users quantify their water footprint, evaluate reduction strategies, and recognize financial and environmental benefits by reducing their effects on water use and water quality.<sup>199</sup>

### Land Use Leadership Alliance

A recent collaborative effort involving water planners and land-use planners from local jurisdictions is moving the dialogue forward. Pace University School of Law's Land Use Law Center brought its Land Use Leadership Alliance (LULA) training program to Colorado in fall 2013. This training convened land-use and water planners with city managers, city council members, developers, regional government planning groups, and CWCB staff for four all-day sessions focused on the land-use and water planning nexus. These sessions proved very productive in the development of strategies for better integration of land and water planning, and also assisted in the development of relationships between land and water planners within and among municipalities.<sup>200</sup>

This collaboration is a model for integrating local planning efforts within a local government and with regional planning efforts. The latest LULA trainings took place in May 2015 and involved the participation of five more Front Range municipalities, including



Tract housing in urbanized areas are quite common. Lot size and landscape choices determine how much water new developments need.

Westminster, Lakewood, Commerce City, Broomfield, and Aurora. Additionally, representatives from South Adams Water and Sanitation, Denver Water, Bancroft-Clover Water, and Green Mountain Water and Sanitation attended. The LULA trainings will serve as a template for trainings the CWCB and the DOLA will organize in 2016, as Senate Bill 15-008 outlines.

### Denver Regional Council of Government's Metro Vision

The Denver Regional Council of Governments (DRCOG) has also been exploring the nexus between water use and land-use patterns in recent years. Adopted in 2011, the latest *Metro Vision 2035* document, which for the first time includes a section that ties water conservation to land-use planning.

## DENVER REGIONAL COUNCIL OF GOVERNMENTS WATER CONSERVATION VISION, GOAL, AND POLICIES

**Vision:** The Denver metro region will maximize the wise use of limited water resources through efficient land development and other strategies, recognizing that no single strategy will meet the state's water needs and the region will need to pursue a range of strategies concurrently.

**Goal:** Reduce regional per-capita M&I water use by working with municipalities, counties, water providers, and other stakeholders within the next 6 to 12 months (February 2012) to identify a specific numeric target or measurable benchmark against which to measure progress.

### Policies:

1. **Regional Collaboration.** DRCOG will bring together local governments, water providers, and other stakeholders to facilitate collaborative efforts that promote water conservation.
2. **Best Practices.** DRCOG will work to increase understanding of the link between land development and water demand, and to identify best practices for promoting the efficient use of water resources across the region.
3. **Efficient Land Development.** Compact development, infill and redevelopment consistent with DRCOG's urban growth boundary/area and urban centers policies will help reduce water demand and related infrastructure costs.

Source: DRCOG Metro Vision 2035:34

DRCOG has a sustainability goal of increasing housing density by 10 percent between 2000 and 2035.<sup>201</sup> According to DRCOG's most recent analysis, the region has increased in density by 5.3 percent since 2000. These data suggest that the region is well situated to achieve the 10 percent density level by 2035.<sup>202</sup> In the residential housing sector, that 10 percent increase will produce approximately a 5 percent decrease in water use—which equates to 31,000 to 46,000 acre-feet of annual savings for the Denver metro area, depending on population growth (both existing and new). At the medium population growth, this is nearly 42,000 acre-feet of savings annually.<sup>203</sup>

## Colorado Water and Growth Dialogue

Through a WEGP grant that addresses the water and growth dilemma, the CWCB is funding a project to estimate demand reductions from various land-use patterns. The Keystone Center secured funding from several grantors (including the CWCB) to complete a two-year dialogue that will bring together water providers, land-use planners and developers, public officials, and other key stakeholders. The goal is to identify meaningful strategies, practices, and policies that will help Coloradans achieve a measurable reduction in the water footprint of new development and redevelopment, and move closer to a long-term balance between water use and growth. To date, the project has produced a draft research report that examines strategies for implementing land-use patterns that reduce water demand. The report identifies four strategies that have the most potential to reduce water demand: Developing smaller residential lots (cluster development), changing from single-family to multi-family development (infill), increasing multi-family development (moving-up), and imposing turf/irrigation restrictions.<sup>204</sup> Additionally, Denver Water and Aurora Water are modeling their service areas' water use patterns on top of existing land-use patterns. The group will then use DRCOG's UrbanSim model to generate future land-use patterns with the overlay of water use patterns. As the project progresses, it will generate several different exploratory scenarios by 2040. These scenarios could reflect the effects of climate change, economics, market demand, and political will for regulation. In 2016, this water and growth project will create a report and roadmap that describes the most promising strategies for addressing the water and growth dilemma in Colorado, along with specific recommendations for implementing and disseminating the strategies.<sup>205</sup>

## Recent Legislation

In 2008, Colorado passed legislation requiring that building permit applications for developments of more than 50 single-family equivalents include specific evidence of an adequate water supply. Adequate water supply is defined as one that is sufficient for the development in terms of quality, quantity, and dependability. Developers must submit proof of adequate supply to the local government through a report from a professional engineer, or from a water

supply expert, that identifies the water source and the types of demand management appropriate for the site. Under this law, a local government was permitted to make the adequacy determination only once, at the beginning of the development permit approval process.<sup>206</sup> In 2013, the governor signed legislation that modified the definition of the term “development permit.” The new definition clarifies that during the development permit approval process, the local government may grant permits for individual stages, rather than for the entire development.<sup>207</sup>

In 2015, Colorado passed Senate Bill 15-008, which tasks the CWCB and the DOLA with implementing trainings for local water use, water demand, and land-use planners. The topic areas will cover best management practices for water demand management, water efficiency, and water conservation. Additionally, the bill requires that all covered entities’ water efficiency plans must evaluate best management practices for water demand management, water efficiency, and water conservation that they may implement through land-use planning efforts.

## BIPs

Each basin roundtable is formulating its own implementation plan that will include land-use goals and activities, in addition to already-planned projects and methods. Chapter 6 explores all of these.

## Arkansas Basin

The Arkansas Basin did not address land use in an extensive manner in its BIP. The Arkansas Basin did, however, create a policy calling for the integration of land-use and water resource planning.

The Arkansas Basin came to consensus on a policy statement regarding land-use and water resource planning.

- ❖ *Policy Statement: The Arkansas Basin Round table supports the integration of land-use and water-resource planning.*<sup>208</sup>

Creating a policy statement for this type of integration is an important first step in the future of demand management in the Arkansas Basin.

## Colorado Basin

The Colorado BIP created a theme; set a goal, measurable outcomes, and short- and long-term needs; and identified projects and methods that connect land use with water conservation.

Theme 5 is to “develop local water conscious land use strategies,” with a primary goal to “develop land-use policies requiring and promoting conservation.” The measurable outcomes associated with this goal include:

- ❖ *Developing recommendations for city, county, and state governing bodies promoting water awareness and efficiency in land-use policy.*
- ❖ *Developing educational material or opportunities for elected and planning officials on water supply issues and conservation options.*
- ❖ *Preserving agriculture by reducing the transfer of agriculture water to municipal use.*<sup>209</sup>

The Colorado Basin established short-term needs, long-term needs, and projects and methods to accomplish this goal. In the short term, it will review existing land-use regulations for water-conscious development requirements and evaluate potential growth in unincorporated areas and water supplies to those areas. In the long term, it will provide local jurisdictions with financial support to implement water-conscious development requirements, and draft recommended model-basin and statewide land-use planning guidelines that focus on water conservation and water-efficient land-use development. As for projects and methods to accomplish the goal, the Colorado Basin suggests the creation of statewide grant opportunities to enable local jurisdictions to review land-use regulations, conduct public outreach, and implement regulations. Additionally, current governmental council should develop model land-use regulations, and every county and city within the basin should have conservation plans with identified goals. The plan also asks that “the state land-use regulations be evaluated to meet long term exponential state population growth (and water demand) with a limited water supply.”<sup>210</sup>

Additionally, the Grand County Region, Summit Region, Eagle River Region, Middle Colorado Region, and Roaring Fork Region all developed specific land-use themes and methods in their needs analysis.

The themes include:

- ❖ *Develop local water conscious land-use strategies that focus on growth that affects water supplies and nonconsumptive/environmental needs.*

The methods include:

- ❖ *Limit development to within urban boundaries*
- ❖ *Promote water conscious growth development through improved land-use policies.*
- ❖ *Water providers should work with neighboring entities to provide and plan for growth between boundaries*
- ❖ *Implement water provider conservation projects*
- ❖ *Review local governments' land-use policies for water-quality and environmental protection standards.*
- ❖ *Assess county master plans and codes for improvements in smart growth land-use policies*
- ❖ *Ensure new development appropriately incorporates water-related values.<sup>211</sup>*

### Gunnison Basin

As with other BIPs, the Gunnison BIP ties land use to water conservation and demand management. The Gunnison Roundtable established goals related to land use and water conservation. Goal 9, which outlines public outreach and education regarding the role of citizens of the Gunnison Basin, identifies land use as a process to achieve this goal: “The GBRT Education Committee will prepare and present annual half-day State of the River seminars for local governments and planning staffs, with the objective of making sure that land-use decisions and new developments are made within the context of the Basin’s probable water future.”<sup>212</sup>

The Gunnison Basin also identified statewide principles that connect water efficiency, conservation, and demand management.

***Principle 5: Water conservation, demand management, and land-use planning that incorporates water supply factors should be equitably employed statewide.*** *Demand management strategies supported by the Gunnison Basin include growth only in proximity to existing or planned infrastructure, high density versus urban sprawl, and landscape limitations. Development in proximity to existing infrastructure should be encouraged only in non-productive, or the least productive, land to preserve productive agricultural land.*

*The Gunnison Basin believes that land-use policies are essential to promoting both water and land conservation. Local land-use policies and regulations should discourage sprawl, link water supplies to development, and provide incentives for higher density developments.”<sup>213</sup>*

Additionally, the Gunnison Basin discusses land use in terms of Colorado River supplies. Under Principle 3: ***Any new supply project from the Colorado River System must have specifically identified sponsor and beneficiaries and meet certain minimum criteria, and “entities must incorporate water supply factors into land-use planning and development.”<sup>214</sup>***

### North Platte Basin

Due to low population and little municipal use, the North Platte Basin did not address land use in its plan.

### Rio Grande Basin

As this chapter stated previously, the Rio Grande Basin has a low population and relatively minor municipal water use. The Rio Grande Basin does not address land use as more urban water basins have, but instead describes the use of conservation easements to manage land development. The conservation easements preserve agricultural land as well as environmental attributes.<sup>215</sup>

### South Platte/Metro Basin

According to the South Platte/Metro Basin, municipal water departments are tasked with meeting a large portion of the water supply needs in the South Platte Basin, and are already using programs such as water audits, rebates for efficient water fixtures and appliances, and education to reduce demand. These efforts could be more effective if water departments worked with their respective planning departments to plan and require water-efficient usage and land development within their cities. For instance, a water department may work with its planning department to implement water-efficient landscaping codes, subdivision regulations, zoning requirements, and master plans.<sup>216</sup>

Nevertheless, many water utilities’ current roles are generally limited to providing for water needs within their service areas, with little cross-over to land-use authority. The South Platte/Metro Basin discusses current land-use authority and water provider authority, opportunities for collaboration,

and examples of current work in this arena. The plan describes the issue that has made collaboration between water and land-use planning difficult in the past. The South Platte/Metro Basin states, “The primary responsibility held by water utilities is to provide for water needs within communities. Coordinating or integrating the land-use and water planning process is a relatively new area being explored for reducing municipal water use. Increasing awareness of limited future water supply opportunities and the potential effects of climate change helps to spur this integration of planning.”<sup>217</sup>

The South Platte/Metro Basin indicates that there are opportunities for closer collaboration and reduction in water use through more integrated land-use planning. These include:

- ❖ *Updates to Comprehensive Plans,*
- ❖ *Changes to zoning requirements,*
- ❖ *Revising water/land-use subdivision regulations, and*
- ❖ *Using the direction provided by the State Water Engineer and recent legislation.*<sup>218</sup>

With regard to opportunities, the plan states that “increasing residential density has the potential to significantly improve water use efficiency and will continue to result in reduced effects on natural resources. The highly urbanized areas of the Front Range corridor have many opportunities to redevelop lands for higher population densities.”<sup>219</sup>

Projects the South Platte/Metro Basin highlighted include the Keystone Center Land Use Study and LULA. The Keystone Center project will identify land-use patterns across the metro area and find ways to more closely integrate land and water planning. The LULA training program “focuses on finding land-use solutions to the challenges posed by growing Front Range populations and Colorado’s limited water resources. The LULA program is designed to help local land-use and water leaders create new networks of support, identify successful land-use techniques, and develop implementable local strategies that will enable a more ‘water-smart’ future for the region.”<sup>220</sup>

The South Platte/Metro BIP ends with a land-use recommendation in the section *Recommendation for Additional SP-BIP Analysis and Refinements*. This recommendation is:

***Further Analysis of Planning Coordination—***  
*The South Platte and Metro Roundtables recommend further investigation into options for increased coordination between water utilities and land-use planners to better plan for water-efficient growth.*<sup>221</sup>

### Southwest Basin

The Southwest Basin identified a need to organize informational events about water conservation, land-use planning and water reuse efforts, tools and strategies. “One strategy to achieve the short-term goals of conservation, land-use planning (which will include coverage and discussion of the 60/40 and 70/30 ratios referenced above), and water reuse is to implement a pilot conservation and land-use planning session in 2015. Initially it is anticipated that this would be a two to four hour workshop for local decision makers and water utility personnel.” If successful, the basin could host the session throughout the basin (for example, in Cortez, Telluride, Pagosa Springs, and other locations) as with the Water 101 Seminar.<sup>222</sup>

### Yampa/White/Green Basin

The Yampa/White/Green Basin did not describe projects or plans for land use in its BIP.

## ACTIONS

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One objective of Colorado’s Water Plan is that by 2025, 75 percent of Coloradans will live in communities that have incorporated water-saving actions into land-use planning. Ten communities have completed land-use and water trainings through the LULA process, and in order to reach the 75 percent population objective, a total of 80 communities and water providers will need to have participated in similar trainings by 2025. The trainings will support approximately 80 water providers and communities statewide to incorporate land-use practices into their water conservation plans. To facilitate the use of local land-use tools to reduce water demands for municipalities and urbanization of agricultural lands, the State will work with partners to pursue the following actions.

1. **Encourage the use of local development tools:** Through voluntary trainings in 2016, the CWCB and DOLA will encourage local governments to incorporate best management practices for water demand management, water efficiency, and water conservation into land-use decisions.

**Trainings may cover the following topics:**

- ❖ Expediting permitting for high-density buildings and developments that incorporate certain water efficiency measures, such as efficient irrigation systems (with plan-check and install-check).
  - ❖ Including water supply and demand management in comprehensive plans.
  - ❖ Installing climate-appropriate landscapes.
  - ❖ Understanding the societal and environmental benefits of urban landscapes
  - ❖ Using appropriate amounts of soil amendments.
  - ❖ Incentivizing maximum-irrigable-area or WaterSense-certified landscapes.
  - ❖ Instituting tax incentives for incorporating certain water efficiency measures for high-density developments, such as cluster developments.
  - ❖ Establishing structured impact (tap) fees designed to promote water-wise developments and in-fill.
  - ❖ Developing water-budget rate structures to help maintain initial projected water budgets for a site.
  - ❖ Introducing landscape and irrigation ordinances.
  - ❖ Exploring the environmental and farmland benefits of water sensitive urban land-use planning.
2. **Examine barriers in state law for implementing the above local development tools:** Over the next 18 months, the CWCB will examine barriers local jurisdictions may face while implementing local development tools.
  3. **Incorporation of land-use practices into water conservation plans:** Over the next 18 months, the CWCB, through partnerships, will develop new guidance for water conservation plans that requires the incorporation of land-use practices. This is an addition to C.R.S. 37-60-126.
  4. **Strengthen partnerships:** To be successful in integrating land-use and water planning, the CWCB will need to partner with many different agencies and groups. Within the next year, the CWCB will establish meetings with various agencies to map out ways in which the CWCB and other agencies can work together on these issues.
- ❖ Creating more stringent green-construction codes that include higher-efficiency fixtures and appliances and more water-wise landscapes.
  - ❖ Exploring landscape-oriented professional education or certification programs.
  - ❖ Examining opportunities to reduce agricultural urbanization and fragmentation.<sup>223</sup>
  - ❖ Local municipalities, local water providers, and county governments will implement water and land-use plans. Without their partnership and support of new ideas, comprehensive water and land planning will not succeed. In addition to partnering with local entities, the CWCB will partner with the Colorado Municipal League, Colorado Counties Incorporated and the Special District Association to ensure successful integrated water and land-use planning.

- ❖ The DOLA is involved in the land-use in the local government arena. Like the CWCB, the DOLA can also leverage its grant funding for water and land-use planning initiatives, such as incentives for incorporating water supply into comprehensive land-use planning.
  - ❖ The DORA regulates professionals in various industries and works to create a fair market place. The CWCB will work with the DORA to focus on the landscape and irrigation industry or the property management industry, and to consider developing certifications for these industries to conserve water.
  - ❖ Home-building and construction organizations, such as the Home Builders Association, LEED, and the U.S. Green Building Council, will be building communities that have a direct influence on water demand. They must be involved in crafting the vision for future water-sensitive developments.
  - ❖ Non-governmental organizations, such as Keystone Center, Alliance for Water Efficiency, Western Resources Advocates, American Planning Association, and economic development councils, can advance land-use and water integration innovation and research.
  - ❖ Academic institutions, such as Colorado State University, University of Colorado Boulder, University of Colorado Denver, One World One Water Center-Metropolitan State, and Rocky Mountain Land Use Institute, can advance land-use and water-integration innovation and research.
  - ❖ LULA brings an innovative training model that could change the way Colorado looks at this subject by breaking down institutional silos. The CWCB will work with LULA, or another local group, to create a Colorado-specific training model for the integration of sustainable, long-term, land, and water planning.
  - ❖ Councils of governments make connections between the local and state government levels. Councils of governments can be strong allies in trainings and research about the land-water nexus.
5. **Funding:** The CWCB should use the WEGP funds and Water Supply Reserve Account grant funds to fund aspects of the land-use and water planning nexus. The CWCB will work with the basin roundtables to proactively seek applicants to use WSRA funds for larger regional efforts that tie more directly into the basin roundtables. It will use the WEGP funds for smaller, more localized efforts.
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**COGCC's Adopted Rules  
Implementing Governor's Oil and Gas Task Force  
Recommendation Nos. 17 and 20  
February 1, 2016**

**Effective Date:** Following adoption by the Commission, these proposed new and amended rules will become effective twenty days after publication by the Secretary of State pursuant to §24-4-103(5), C.R.S. All provisions of these rules will be applied prospectively to any Application for Oil and Gas Location Assessment, Form 2A, for a Large UMA Facility submitted after the effective date. For Form 2A applications submitted but not approved prior to the effective date, pre-application notices and consultations otherwise required by Rule 305A will be waived, but applicable best management practices and mitigation measures pursuant to Rule 604.c.(4) will be required.

**Rules Implementing Recommendation No. 17**

**100 Series**

**LARGE UMA FACILITY** shall mean any Oil and Gas Location proposed to be located in an Urban Mitigation Area and on which: (1) the operator proposes to drill 8 or more new wells; or (2) the cumulative new and existing on-site storage capacity for produced hydrocarbons exceeds 4,000 barrels.

**300 Series**

**305A. LOCAL GOVERNMENT NOTIFICATION AND CONSULTATION FOR LARGE UMA FACILITIES.**

a. **Notice of Intent to Construct a Large UMA Facility.** Subject to the exceptions specified in subsection 305A.e., an operator proposing a Large UMA Facility shall deliver a written Notice of Intent to Construct a Large UMA Facility not less than 90 days prior to initiating the Form 2A process with the Commission and before the operator has finalized a specific location with the Surface Owner as follows:

(1) The Notice must be delivered to:

- A. The local government with land use authority over the proposed location of a Large UMA Facility; and
- B. The Surface Owner of the lands on which a Large UMA Facility is proposed.

(2) The operator must deliver the Notice by hand delivery; certified mail, return-receipt requested; electronic mail, return receipt requested; or by other delivery service with receipt confirmation unless an alternative method of notice is pre-approved by the Director.

**b. Content of Notice of Intent to Construct a Large UMA Facility.** A Notice of Intent to Construct a Large UMA Facility shall include the following information:

- (1) A description and depiction of the proposed Oil and Gas Location and the planned facilities;
- (2) A description of the siting rationale for proposing to locate the facility within the Urban Mitigation Area, including a description of other sites considered and the reasons such alternate sites were rejected; and
- (3) An offer to consult with the local government with land use authority over the proposed location to seek agreement regarding siting the Large UMA Facility, considering alternative locations and potential best management practices.

**c. Consultation between the Operator and the Local Government with Land Use Authority.** If the local government with land use authority over the proposed Large UMA Facility accepts an operator's offer to consult in writing within 30 days of receipt of a Notice of Intent to Construct a Large UMA Facility, the operator shall consult in good faith regarding siting of, and best management practices to be employed at, the proposed location.

- (1) The operator will invite the Surface Owner to participate in the local government consultation so the Surface Owner's siting requests and concerns can be considered.
- (2) The Director will participate in the consultation process between the local government and the operator at the request of either.
- (3) If the local government and operator are unable to reach agreement regarding the location for a proposed Large UMA Facility, the operator shall offer in writing to engage in mediation with the local government.
  - A. If the local government agrees to mediation, the operator and the local government shall jointly select a mediator or mediators and equally share the cost of mediation.
  - B. Upon selection of a mediator(s), the mediation shall conclude within 45 days unless the operator and local government agree to an extension of time.

- C. The Director is not a party to the mediation, but at the request of either the local government or the operator, the Director shall provide technical assistance to the parties or the mediator to the extent the Director is able.
- (4) This Rule 305A.c. does not prescribe any particular form of consultation or local land use planning or approval process.
- d. **Meeting with the Surface Owner.** Within 30 days of receiving the Notice of Intent to Construct a Large UMA Facility, the Surface Owner of the lands on which the operator proposes to locate a Large UMA Facility may request a meeting with the operator and Director regarding siting of the proposed Large UMA Facility. The Director will schedule the meeting.
- e. **Exceptions to Large UMA Facility Notification and Consultation Process.**
- (1) An operator proposing a Large UMA Facility is not required to provide a Notice of Intent to Construct a Large UMA Facility or to engage in the consultation processes described in Rule 305A.a.-d. in any of the following circumstances:
- A. The local government with land use authority over the proposed location of a Large UMA Facility has opted out of the Rule 305A notification and consultation processes. A local government may opt out of the Rule 305A notification and consultation processes by notifying the Director in writing that the local government does not wish to receive Notices of Intent to Construct Large UMA Facilities for such Facilities proposed within its jurisdiction.
- B. The operator and the local government with land use authority over the proposed location of a Large UMA Facility have an existing agreement regarding siting of oil and gas locations and the proposed Large UMA Facility is within the scope of the agreement. An operator relying on this exception shall submit a copy of relevant provisions of the agreement with its Form 2A as required by Rule 303.b.(3)K. to demonstrate compliance with Rule 305A.
- C. The Large UMA Facility is proposed to be located within an approved site specific development plan (as defined in §24-68-102(4)(a), C.R.S., that establishes vested property rights as defined in §24-68-103, C.R.S.), and which expressly governs the location of Wells or Production Facilities on the surface estate. An operator relying on this exception shall submit a copy of relevant portions of the plan and approval by the local government

with its Form 2A as required by Rule 303.b.(3)K. to demonstrate compliance with Rule 305A.

- D. The Location of the Large UMA Facility is within acreage identified as an oil and gas operations area included in an approved “Application for Development” as that is defined under §24-65.5-101, et. seq., C.R.S. An operator relying on this exception shall submit a copy of relevant portions of the plan and approval by the local government with its Form 2A as required by Rule 303.b.(3)K. to demonstrate compliance with Rule 305A.
- (2) For a Form 2A submitted pursuant to (1)B., (1)C, or (1)D. of this Rule 305A.e., the Director within 30 days may verify with the local government with land use authority that the proposed Large UMA Facility is within the scope of the cited agreement or development plan. If, after conferring with the local government with land use authority and the operator, the Director determines the proposed Large UMA Facility is not within the scope of the cited agreement the Director will reject the Form 2A and notify the operator that it must comply with Rule 305A.a.-d.
- (3) All Rule 604.c.(4) requirements apply to all Large UMA Facilities regardless of whether a proposed Large UMA Facility is excepted from the Rule 305A.a-d. requirements pursuant to this Rule 305A.e.

**f. Initiating the Form 2A Process.**

- (1) An operator may initiate the Form 2A process by submitting its pre-application notices pursuant to Rule 305.a. once any of the following occur:
- A. The operator and the local government with land use authority reach agreement regarding a proposed Large UMA Facility’s site.
- B. The operator asserts the proposed Large UMA Facility is subject to an exception pursuant to Rule 305A.e.
- C. The local government with land use authority waives the Rule 305A procedures in writing.
- D. The local government with land use authority fails to respond in writing within 30 days of receiving the Notice of Intent to Construct a Large UMA Facility.
- E. At least 90 days have passed since the local government with land use authority received a written Notice of Intent to Construct a Large UMA Facility and the local government and the operator have engaged in

consultation pursuant to Rule 305A.c., but have not reached agreement. In these cases, the operator may initiate the Form 2A process with its preferred site, but must state on the Form 2A that the local government does not agree with the site for the proposed Large UMA Facility. A Form 2A submitted under these circumstances will be docketed for a Commission hearing as follows:

- i. The Director will notify the operator and local government with land use authority when the Director's technical review is complete and will confirm whether an agreement has been reached regarding the site for the proposed location.
  - ii. If an agreement has been reached, the Director will issue a decision on the Form 2A.
  - iii. If an agreement has not been reached, the Director will notice the Form 2A for a Commission hearing.
    - aa. Such a hearing shall be expedited but will be held only after both the 20 days' notice and the newspaper notice are given as required by §34-60-108, C.R.S. However, the hearing can be held after the newspaper notice if all of the entities listed under Rule 503.b. waive the 20-day notice requirement.
    - bb. The hearing will be conducted pursuant to Rule 528.a. For purposes of the hearing, the operator will be the Applicant and the local government with land use authority may intervene as a matter of right.
- (2) The Director will reject a Form 2A submitted for a Large UMA Facility if the documentation submitted with the Form 2A pursuant to Rule 303.b.(3)K. does not demonstrate compliance with Rule 305A for the proposed Large UMA Facility.

## 600 Series

604.c.(4) **Large UMA Facilities.** Large UMA Facilities should be built as far as possible from existing building units and operated using the best available technology to avoid or minimize adverse impacts to adjoining land uses. To achieve this objective, the Director will require a combination of best management practices and required

mitigation measures, and may also impose site-specific conditions of approval related to operational and technical aspects of a proposed Large UMA Facility.

- A. All Rule 604.c.(3) Exception Zone Setback mitigation measures are required for all Large UMA Facilities, regardless of whether the Large UMA Facility is located in the Buffer Zone or the Exception Zone.
- B. Required Best Management Practices. A Form 2A for a Large UMA Facility will not be approved until best management practices addressing all of the following have been incorporated into the Oil and Gas Location Assessment permit.
- i. Fire, explosion, chemical, and toxic emission hazards, including lightning strike hazards.
  - ii. Fluid leak detection, repair, reporting, and record keeping for all above and below ground on-site fluid handling, storage, and transportation equipment.
  - iii. Automated well shut-in control measures to prevent gas venting during emission control system failures or other upset conditions.
  - iv. Zero flaring or venting of gas upon completion of flowback, excepting upset or emergency conditions, or with prior written approval from the Director for necessary maintenance operations.
  - v. Storage tank pressure and fluid management.
  - vi. Proppant dust control.
- C. Site Specific Mitigation Measures. In addition to the requirements of subsections A. and B. of this Rule 604.c.(4), the Director may impose site-specific conditions of approval to ensure that anticipated impacts are mitigated to the maximum extent achievable. The following non-exclusive list illustrates types of potential impacts the Director may evaluate, and for which site-specific conditions of approval may be required:
- i. Noise;
  - ii. Ground and surface water protection;
  - iii. Visual impacts associated with placement of wells or production equipment; and
  - iv. Remote stimulation operations.

- D. In considering the need for site-specific mitigation measures, the Director will consider and give substantial deference to mitigation measures or best management practices agreed to by the operator and local government with land use authority.

### **Rules Implementing Recommendation No. 20**

#### **300 Series**

#### **302.c. Operator Registration with Local Governments for Advance Planning.**

- (1) When used in this subpart, “municipal local jurisdiction” means a home rule or statutory city, town, territorial charter city, or combined city and county.
- (2) Beginning on May 1, 2016, all operators that have filed a Form 1 with the Commission shall register with each municipal local jurisdiction and county in which it has an approved drilling unit or a pending or approved Form 2 or Form 2A. An operator registers by complying with the local registration process established by the municipal local jurisdiction or county. If a local registration process does not exist, an operator may comply by delivering current copies of its Form 1 and Form 1A to the Local Governmental Designee (“LGD”) in jurisdictions that have designated an LGD, and to the planning department in jurisdictions that do not have an LGD.
- (3) A municipal local jurisdiction may request any operator registered within its jurisdiction provide the following information to the municipal local jurisdiction and the Commission’s Local Government Liaison (“LGL”):
  - A. Based on an operator’s current business plan as of the date of the request, a good faith estimate of the number of wells the operator intends to drill in the next five years in the local jurisdiction. A publicly traded company’s well estimates may be based on reserves classified as “proved undeveloped” for SEC reporting purposes.
  - B. A map showing the location within the local jurisdiction of an operator’s existing well sites and related production facilities; sites for which the operator has approved, or has submitted applications for, drilling and spacing orders, Form 2s or Form 2As; and, sites the operator has identified for development on its current drilling schedule for which it has not yet submitted applications for Commission permits.

- C. An operator will provide the well estimates requested pursuant to this subsection 3 using reasonable business judgment based on information known to the operator as of the date the estimates are requested. Well estimates are subject to change at any time at the operator's sole discretion.

### Conforming Rule Changes

#### **303.b.(3)K. Certification of Local Government Notification in Urban Mitigation Areas.**

- i. If a proposed Oil and Gas Location is within an Urban Mitigation Area, but is not a Large UMA Facility, the operator shall submit evidence that the local government with land use authority received the pre-application notice required by Rule 305.a.(1).
- ii. For a proposed Large UMA Facility, the operator shall certify on the Form 2A that the operator complied with Rule 305A and submit documentation supporting its certification demonstrating one of the following:
  - aa. The operator and local government with land use authority reached agreement regarding the site for the proposed Large UMA Facility;
  - bb. The proposed Large UMA Facility was subject to an exception under Rule 305A.e.;
  - cc. The local government with land use authority waived the notification and consultation procedures in Rule 305A.a.(1) and 305A.c. in writing;
  - dd. The local government with land use authority did not timely respond to the Notice of Intent to Construct Large UMA Facility; or
  - ee. The operator and local government with land use authority engaged in consultation and at least 90 days passed after the local government received the Notice of Intent to Construct Large UMA Facility but no agreement was reached regarding the siting of the proposed Large UMA Facility.
- iii. For a proposed Large UMA Facility, the operator shall submit evidence that Proximate Local Governments received the pre-application notice required by Rule 305.a.(3).

### **303.c. PROCESSING TIME FOR APPROVALS UNDER THIS SECTION.**

(1) In accordance with Rule 216.f.(3), where a proposed Oil and Gas Location is covered by an approved Comprehensive Drilling Plan and no variance is sought from such Plan or these rules not addressed in the Comprehensive Drilling Plan, the Director shall give priority to and approve or deny an Application for Permit-to-Drill, Form 2, or, where applicable, Oil and Gas Location Assessment, Form 2A, that is not a Large UMA Facility within 30 days of a determination that such application is complete pursuant to Rule 303.h., unless significant new information is brought to the attention of the Director. The Director shall give priority to a Form 2A proposing a Large UMA Facility that is consistent with a Comprehensive Drilling Plan, or a local government comprehensive plan that specifies locations for oil and gas facilities, and shall approve or deny such an application within 90 days.

#### **(2) Request for Hearing.**

- A. An operator may request a hearing before the Commission on an Application for Permit-to-Drill, Form 2, and on an Oil and Gas Location Assessment, Form 2A, that is not a Large UMA Facility if the Director has not issued a decision within 75 days following a determination that the application is complete;
- B. An operator may request a hearing before the Commission on an Oil and Gas Location Assessment, Form 2A, for a Large UMA Facility if the Director has not issued a decision within:
  - i. 90 days following a determination that the application is complete, if:
    - aa. At the time the Form 2A is submitted, the operator and the local government with land use authority reached agreement regarding the site for the proposed Large UMA Facility;
    - bb. The Form 2A was excepted from the Rule 305A consultation process; or
    - cc. The local government with land use authority waived the 305A procedures in writing or did not timely respond in writing to the Notice of Intent to Construct.
  - ii. 120 days following a determination that the application is complete, if, at the time the Form 2A is submitted, the operator and the local government

with land use authority had not reached agreement regarding the site for the proposed Large UMA Facility.

- C. A hearing pursuant to either subpart A. or B. shall be expedited but will be held only after both the 20 days' notice and the newspaper notice are given as required by §34-60-108, C.R.S. However, the hearing can be held after the newspaper notice if all of the entities listed under Rule 503.b. waive the 20-day notice requirement.

**305.a. Pre-application notifications.** For Oil and Gas Locations proposed within an Urban Mitigation Area or within the Buffer Zone Setback, an Operator shall provide a "Notice of Intent to Conduct Oil and Gas Operations" to the persons specified in subparts (1) and (2) not less than 30 days prior to submitting a Form 2A, Oil and Gas Location Assessment, to the Director.

- (1) Urban Mitigation Area Notice to Local Government. For Oil and Gas Locations within an Urban Mitigation Area, an Operator shall notify the local government in writing that it intends to apply for an Oil and Gas Location Assessment. Such notice shall be provided to the Local Governmental Designee in those jurisdictions that have designated an LGD, and to the planning department in jurisdictions that have no LGD. The notice shall include a general description of the proposed Oil and Gas Facilities, the location of the proposed Oil and Gas Facilities, the anticipated date operations (by calendar quarter and year) will commence, and that an additional notice pursuant to Rule 305.c. will be sent by the Operator. This notice shall serve as an invitation to the local government to engage in discussions with the Operator regarding proposed operations and timing, local government jurisdictional requirements, and opportunities to collaborate regarding site development. A local government may waive its right to notice under this provision at any time by providing written notice to an Operator and the Director. The notice requirement of this subpart does not apply to local governments that received notice and accepted the offer to consult pursuant to Rule 305A.a.

\* \* \*

- (3) Large UMA Facility Notice to Proximate Local Governments. For a proposed Large UMA Facility, an operator shall notify any home rule or statutory city, town, territorial charter city, combined city and county, or county (for purposes of this section "Proximate Local Governments") within 1,000 feet of the proposed site that a permit to construct a Large UMA Facility is being sought not less than 45

days prior to submitting a Form 2A, Oil and Gas Location Assessment, to the Director. A local government may waive its right to notice under this provision at any time by providing written notice to the operator and the Director.

- A. The Notice shall include the following: the operator's contact information; a description of the location and a general description of the proposed Large UMA Facility; and state that the Proximate Local Government may provide comments as provided in Rule 305.d.
- B. The Director will respond in writing to any Proximate Local Government comments regarding specific best management practices reasonably related to potential significant adverse impacts to public health, safety and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy for the proposed Large UMA Facility.

**305.d. Comment Period.** The Director shall not approve a Form 2A, or any associated Form 2, for a proposed Well or Production Facility during the comment period, and shall accept and immediately post on the Commission's website any comments received from the public, the Local Governmental Designee, the Colorado Department of Public Health and Environment, or Colorado Parks and Wildlife regarding the proposed Oil and Gas Location.

- (1) The comment period for a Form 2 or a Form 2A for an Oil and Gas Location that is not a Large UMA Facility is 20 days from posting pursuant to Rule 305.b.
  - A. The Director shall extend the comment period to thirty (30) days upon the written request during the 20 day comment period by the Local Governmental Designee, the Colorado Department of Public Health and Environment, Colorado Parks and Wildlife, the Surface Owner, or an owner of surface property who receives notice under Rule 305.c.(1)A.iii.
  - B. For Oil and Gas Locations proposed within an Urban Mitigation Area or within 500 feet of a Building Unit, the Director shall extend the comment period to not more than 40 days upon the written request of the Local Governmental Designee received within the original 20 day comment period.
- (2) For a Large UMA Facility, the comment period is 40 days from posting pursuant to Rule 305.b.
- (3) At the Director's sole discretion, the comment periods identified above may be extended or re-opened for a period not to exceed 20 days.

- (4) The Director shall post notice of an extension granted under this provision on the COGCC website within 24 hours of receipt of the extension request.

**306.d.(1) Consultation to Occur.**

A. The Commission shall consult with the Colorado Department of Public Health and Environment on an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, where:

i. Within 14 days of notification pursuant to Rule 305, the Local Governmental Designee requests the participation of the Colorado Department of Public Health and Environment in the Commission's consideration of an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, based on concerns regarding public health, safety, welfare, or impacts to the environment;

ii. The operator seeks from the Director a variance from, or consultation is otherwise required or permitted under, a provision of one of the following rules intended for the protection of public health, safety, welfare, or the environment:

aa. Rule 317B. Public Water System Protection;

bb. Rule 325. Underground Disposal of Water;

cc. Rule 603. Statewide Location Requirements for Oil and Gas Facilities, Drilling, and Well Servicing Operations;

dd. Rule 604. Setback and Mitigation Measures for Oil and Gas Facilities, Drilling, and Well Servicing Operations;

ee. Rule 608. Coalbed Methane Wells;

ff. Rule 805. Odors and Dust;

gg. 900-Series E&P Waste Management; or

hh. Rule 1002.f. Stormwater Management.

All requests for variances from these rules must be made at the time an operator submits a Form 2A.

- iii. The operator submits an Application for an Oil and Gas Location Assessment, Form 2A, for a Large UMA Facility.

**604.b.(1) Existing Oil and Gas Locations.** The Director may grant an exception to setback distance requirements set forth in Rule 604 within a Designated Setback Location when a Well or Production Facility is proposed to be added to an existing or approved Oil and Gas Location if the Director determines alternative locations outside the applicable setback are technically or economically impracticable; mitigation measures imposed in the Form 2 or Form 2A will eliminate, minimize or mitigate noise, odors, light, dust, and similar nuisance conditions to the extent reasonably achievable; the operator has complied with the notice and consultation requirements of Rule 305A, if applicable; the proposed location complies with all other safety requirements of these Commission Rules; and:





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WWW.COGA.ORG

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February 2, 2016

VIA EMAIL

Eagle County Board of County Commissioners  
P.O. Box 850  
500 Broadway  
Eagle, Colorado 81631

Dear Commissioners,

On behalf of the Colorado Oil & Gas Association (COGA), we would like to express our appreciation to Eagle County for seeking COGA's input regarding the County's interest in implementing oil and gas regulations through a "1041" designation by the COGCC. Upon consideration, COGA has concluded that it would oppose any such request by the County.

COGA does not oppose appropriate local government regulation of oil and gas. State regulations outline specific areas of land use regulation that may be implemented by local governments. We believe it is in the best interest of all entities to stay aligned with the state and use existing processes.

COGA's primary concern regarding Eagle County's desire to use 1041 authority to regulate all aspects of oil and natural gas development is that the attempted exercise of such authority will create legal conflicts with the State's exclusive jurisdiction in regulating the technical and operational aspects of oil and natural gas development. This is a regulatory responsibility that cannot be delegated by the Colorado Oil and Gas Conservation Commission ("COGCC") to another agency through 1041 or otherwise, and which has been found to clearly preempt local government rules where operational conflicts arise. Furthermore, the 1041 statute is clear that only the COGCC can identify mineral resource areas as areas of state interest, but those identified areas would still be subject to COGCC's non-delegable regulatory responsibilities. For these reasons, COGA suggests Eagle County not pursue regulation of oil and gas through the 1041 statute which will do little more than create confusion, and instead use its existing zoning and land use mechanisms to regulate oil and gas surface activities as necessary.

Eagle County's Special Counsel expressed to COGA that the county wants to create a collaborative and efficient process and thus will not move forward with the proposal if the oil and gas industry does not deem it workable. COGA appreciates the County's

collaborative approach and has concluded this proposal is not a workable or appropriate regulatory framework for the oil and gas industry.

With a history of over 150 years in Colorado, oil and gas development has been proven to coexist with communities across the state. While we understand there are public concerns, COGA notes that only eight wells have been drilled within the county since 1948 and all are categorized as “Plugged and Abandoned” or “Dry and Abandoned” in state records. After speaking with our operators and reviewing existing data, to COGA’s knowledge there are no current or future plans for oil and gas development within Eagle County. We believe there is ample time for a regulatory update that includes a thoughtful and comprehensive stakeholder process.

We respectfully request that the County not move forward with implementation of the 1041 process as it relates to oil and gas, and instead employ local regulations and other available processes that remained aligned with state regulations. We encourage you to utilize COGA and its members as a resource to you and your staff, if needed. We believe the industry and Eagle County will build a lasting and productive partnership that will continue for years to come.

Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Anne Carto". The signature is written in a cursive, flowing style.

Anne Carto  
Community Outreach Coordinator

cc:

Brent McFall, Eagle County Manager  
Barbara Green, Eagle County Special Counsel  
Bob Narracci, Eagle County Local Government Designee

## MEMORANDUM

**TO:** NWCCOG QQ Committee

**FROM:** Bill Hoblitzell

**DATE:** 2/23/16

**SUBJECT:** Basic Standards Workgroup Issues Update

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Since Fall 2014, the Basic Standards Workgroup considered issues likely to appear in the Water Quality Control Commission (WQCC) Regulation No. 31 - Basic Standards Rulemaking. The next rulemaking hearings will occur June 13-15<sup>th</sup> 2016 in Denver. These hearings represent the culmination of a triennial review process that considers all water use classifications and water quality standards relevant to Regulation 31 – *The Basic Standards and Methodologies for Surface Water*. QQ will attain Party Status for the hearings in June.

Lotic Hydrological has participated in the workgroup on behalf of QQ. Since 2014, the Basic Standards Workgroup considered many issues in depth. Some were dropped or deferred beyond 2016, while several advanced through the process. WQCD identified 6 issues as ripe for consideration, and has provided or requested proposals for potential changes to Regulation 31 that might address these issues.

The 6 issues address:

- (1) resolution of EPA’s disapproval of provisions for default use protected designation for effluent dependent and effluent dominated waters;
- (2) language in section 31.8(1)(b), integration into discharge permits of water quality standards specific to iron, manganese, and sulfate;
- (3) temperature standards for shoulder seasons;
- (4) temperature standards in transition zones;
- (5) consideration of heat dissipation below a discharge; and
- (6) new federal water quality standards rules that has not previously been identified by the division.

Proposals were made available on the commission’s [website](#) in late January. Proposal language authored both by WQCD and other parties are available for review, as well as opinions on proposal ripeness by various other parties. A full timeline for dates related to the rulemaking hearings is included below.

QQ would like to invite feedback, questions, or concerns from all members regarding these 6 issues. Please review the issue summaries below. Members requiring additional clarification, or wishing to provide feedback, are encouraged to contact Bill Hoblitzell with Lotic Hydrological at [bill@lotichydrological.com](mailto:bill@lotichydrological.com) or Torie Jarvis with QQ at [qqwater@nwccog.org](mailto:qqwater@nwccog.org).

### **Summary of Issues Under Review:**

#### **1) Use Protected designation for effluent dependent/effluent dominated waters (EPA Disapproval)**

**Proposal Lead:** WQCD Standards Unit, Metro Wastewater Reclamation District

**Issue Summary:** Revisions made by WQCC in the 2010 Basic Standards hearing process assigned use protected (UP) status as the default designation for ephemeral or intermittent streams where effluent dominates flows for a significant portion of the year [31.8(2)(b)(i)(C)]. The UP designation eliminates these waters from consideration for special protections afforded by *outstanding waters* designation or the *antidegradation review* process. EPA disapproves of this approach and contends that it does not afford appropriate protections in waters that support aquatic life or recreation; EPA suggests that UP designation should be designated based on water quality rather than water source.

**Proposal:** Division proposes to delete 31.8(2)(b)(i)(C) entirely, or provide a water quality showing using an expanded water quality test to determine UP status. Metro WRD has proposed eliminating the original language for language that requires performing an additional test to make a water quality showing that surface water quality for at least 4 of 12 common parameters in effluent dependent/dominant streams exceeds levels for aquatic life and recreational use classes.

**Considerations for Members:** Modification of UP designation criteria may affect discharge permit application and renewal processes on streams currently designated as UP. EPA's proposal may provide support for QQ's position that UP designation should not occur on streams where effluent dependence/dominance is a result of upstream water diversions.

#### **2) Changes to regulation 31 §31.8(1)(b) will eliminate iron, manganese, and sulfate from consideration in antidegradation review.**

**Proposal Lead:** WQCD Standards Unit.

**Issue Summary:** These 3 parameters are secondary aesthetic parameters for drinking water rather than Federal Clean Water Act §101 uses currently (aquatic life and recreation, aka the "fishable/swimmable" criteria). The change will allow concentrations of these parameters to reach the water supply standard without triggering antidegradation review.

**Considerations for Members:** This seeks to reduce regulatory complexity and should provide no changes to the required duties of dischargers as provided in other statutes including Regulation 61 (Colorado Discharge Permit System).

#### **3) Temperature: Shoulder Season Implementation**

**Proposal Lead:** WQCD Standards Unit

**Issue Summary:** Abrupt step-changes in temperature standards between summer and winter seasons do not reflect the natural temperature profiles of streams as dictated by geographic and climactic conditions. WQCD and many dischargers would like to address the issue on a statewide basis, rather than the current method of site-specific standards and basin rulemakings.

**Proposal:** WQCD proposes to revise the seasonal table value standard (TVS) in § 31.16 Table I such that numeric criteria apply to “core” winter and summer months and narrative criteria apply to four transitional months. The narrative standard for shoulder seasons would assess the direction of seasonal progression by using a rolling or ‘smoothed’ WAT.

**Considerations for Members:** WQCD and some dischargers believe efforts to resolve the temperature standard issue could result in savings in time and money by eliminating the need to propose site-specific temperature standards on segments, including one or more QQ members. Other entities, primarily CPW, US EPA, and a statewide conservation bloc, have expressed significant concerns to the proposed changes, stating an insufficient scientific underpinning, and vague guidance for both 305b/303d stream assessments and discharge permit implementation.

To the extent that the burden of proving temperature impacts to aquatic life is shifted away from dischargers or diverters and onto CDPHE, local governments, or private entities, this change may generate an increased potential for water quality degradation. QQ requests feedback from members to further develop an understanding of the change’s potential impacts in the NWCCOG region and formulate a consensus position for the rulemaking hearing.

#### 4) Transition zone temperature standards using elevation-based equation

**Proposal Lead:** WQCD Standards Unit

**Issue Summary:** WQCD currently assigns temperature standards on a segment-wide approach based on the expected fish species present. The Division feels this approach may fail to account for natural gradients in expected temperatures resulting from physiogeographic factors such as elevation and climate, resulting in attainment issues on segments that traverse a wide spectrum of environmental gradients.

The transition zone temperature standard has received support primarily from dischargers with identified temperature attainment issues. Concerns include that the issue is not actually a widespread problem, the dataset used to develop the program is not adequately filtered for impacted sites, and the analysis failed to include other potential factors affecting temperature on segments such as riparian cover.

**Proposal:** WQCD proposes to rectify attainment issues in transition zone streams by instituting an elevation-based MWAT equation for the temperature TVS in §31.16 Table I Footnote 5c. The footnote table defines transition zone elevations for stream and lake temperature tiers, below which the elevation-based MWAT equation will apply.

**Considerations for Members:**

To the extent that the burden of proving temperature impacts to aquatic life is shifted away from dischargers or diverters and onto CDPHE, local governments, or private entities, this change may generate an increased potential for water quality degradation. One or more QQ members are supportive of this concept, while the CPW, US EPA, and a statewide conservation bloc have voiced concerns. QQ requests feedback from members to further develop an understanding of the change's potential impacts in the NWCCOG region and formulate a consensus position for the rulemaking hearing.

#### 5) **Consideration of heat dissipation below a discharge**

**Proposal Lead:** No proposal currently

**Issue Summary:** Permitted dischargers contributing a thermal load to receiving streams with chronic temperature standards may currently be subject to temperature effluent limitations. Current Regulation 31 language allows for a simplistic mass-balance approach to assess whether temperature effects will occur outside the regulatory mixing zone. Dissipative cooling may simplify the implementation of effluent temperature permitting if a discharger can show the thermal load is assimilated relatively quickly in a smaller zone than the regulatory mixing zone, without negative impacts to the passage of fish, other aquatic life, and wildlife.

**Proposal:** None currently.

**Considerations for Members:** Dissipative cooling rules may provide limited relief to permitted dischargers with attainment difficulties in a number of locations across the state, primarily in Front Range municipalities.

#### 6) **Request for proposals to address provisions in the new federal water quality standards rules that have not been previously identified by WQCD**

**Proposal Lead:** Division requests a proposal to clarify the current language in Regulation 31 §31.8(3)(d)(iii). This refers to the antidegradation review process, providing guidance for considering the social and economic necessity for a potential regulated activity that might degrade water quality.

**Issue Summary:** When reviewing proposed regulated activities that may impact and degrade water quality, the division must determine if the activity will 1) result in significant degradation of reviewable waters, and 2) whether the degradation is truly necessary to accommodate economic or social development. If the activity is deemed necessary, then proponents must explore the potential for less-degrading water quality alternatives that still accomplish the regulated activity's purpose. For clarity, the Division proposes additional language stating that if available, the least degrading alternative must be selected.

**Proposal:** Division proposes a short addition of clarifying language to §31.8(3)(d)(iii).

**Considerations for Members:** Changes to the antidegradation review process language do not alter the substance and intent of the provision; they clarify that when a less degrading alternative technology, design, or process is available, it should be chosen.

**Schedule of upcoming dates related to the June hearings:**

<b>Item</b>	<b>Date (all due dates by 5pm)</b>
Proponents' prehearing statements due	March 9
Party status requests due	March 30
Responsive Prehearing Statements due	April 20
Rebuttal Statements due	May 23
Last date for submittal of motions	May 25
Notify commission office if participating in prehearing by phone	May 27, 12:00pm
Prehearing conference (mandatory for parties)	May 31 1:00pm
Non-party written comment	June 1
Basic Standards <b>Rulemaking Hearings</b>	June 13-15



## **GRAND LAKE CLARITY STAKEHOLDERS' MEMORANDUM OF UNDERSTANDING**

The Parties to this Memorandum of Understanding (MOU) are the U.S. Department of the Interior Bureau of Reclamation (Reclamation), Northern Colorado Water Conservancy District (Northern Water), Grand County Board of Commissioners (Grand County), Northwest Colorado Council of Governments (NWCCOG), and Colorado River Water Conservation District (River District). For purposes of Sections III, VIII, and X of this MOU, Grand County, NWCCOG and River District collectively constitute the West Slope.

### **I. EXPLANATORY RECITALS**

- A. WHEREAS, Grand Lake is Colorado's largest natural lake and part of the headwaters to the Colorado River;
- B. WHEREAS, Grand Lake is used as a component of the Colorado-Big Thompson (C-BT) Project authorized by the United States Congress in 1937;
- C. WHEREAS, a portion of Senate Document No. 80, entitled "Manner of Operation of Project Facilities and Auxiliary Features," pages 2-5, states that the C-BT Project "must be operated in such a manner as to most nearly effect" the five "primary purposes;" (Exhibit A)
- D. WHEREAS, the "Manner of Operation of Project Facilities and Auxiliary Features," page 3, states "In order to accomplish these purposes the project should be operated by an unprejudiced agency in a fair and efficient manner, equitable to all parties having interests therein, and in conformity with" twelve "particular stipulations"(Exhibit A);
- E. WHEREAS, the Parties recognize Reclamation's operating authority for the C-BT Project. Reclamation will take into account individual input of members of the Adaptive Management Committee (AMC) and consider operational changes to meet the clarity goals.
- F. WHEREAS, water clarity in Grand Lake has been measured by Secchi disk visibility and a study dating back to the 1940s has documented a single Secchi disk visibility measurement of 9.2 meters;
- G. WHEREAS, Grand County, NWCCOG and the River District believe that the scenic attraction of Grand Lake is diminished due to decreased water clarity;
- H. WHEREAS, Reclamation and Northern Water have entered into a "Supplement of Contract Between the United States of America and the Northern Colorado Water Conservancy District for Addressing Commitments Associated with Meeting the Grand Lake Clarity Standard" dated October 23, 2013 (Clarity Supplement), which establishes a long-term commitment to meet the applicable Grand Lake clarity standard (Exhibit B).

- I. WHEREAS, the proposed Windy Gap Firming Project, which will transport water from the Colorado River through the west slope features of the C-BT Project for delivery to the front range of Colorado is subject to a permit from Grand County memorialized in Grand County Resolution No.2021PA-12-1 ("2012 Permit"). Condition 7 of the 2012 Permit provides in pertinent part that "the 2012 Permit shall not be effective until the Clarity MOU...[has] been executed;"
- J. WHEREAS, for the purposes of this MOU, the Three Lakes System includes Grand Lake, Shadow Mountain Reservoir, Granby Reservoir, and the Colorado River between Shadow Mountain Reservoir and Granby Reservoir.
- K. WHEREAS, the Water Quality Control Commission ("Commission") adopted a narrative clarity standard and numeric clarity standard (with a delayed effective date) for Grand Lake in 2008. The Commission amended both standards in 2014.
- L. WHEREAS, the Commission's current clarity standard is:
- "The highest level of clarity attainable, consistent with the exercise of established water rights, the protection of aquatic life, and protection of water quality throughout the Three Lakes system."
- 5 CCR 1002-33, Numeric Standards Table, at p. 13 (June 30, 2015).
- M. WHEREAS, the Commission stated in 2014 that:
- "sufficient effort has not yet been focused on determining an "attainable" level of clarity that is consistent with the constraints identified in the narrative standard", and that "the Commission expects and anticipates a cooperative effort that will focus on identifying an attainable and protective Grand Lake clarity standard".
- 5 CCR 1002-33, Numeric Standards Table, at p. 13 (June 30, 2015).
- N. WHEREAS, the Parties are engaged in a cooperative effort, as set forth below, in response to the Commission's direction.
- O. WHEREAS, Grand County does not accept responsibility for payment of any costs associated with any action alternative(s) selected under Reclamation's National Environmental Policy Act (NEPA) process to improve clarity in Grand Lake as described in the Clarity Supplement (Exhibit B).

## II. PURPOSE

The purpose of this MOU is to establish an adaptive management process while Reclamation conducts a planning and NEPA process to evaluate alternatives to improve clarity in Grand Lake as described in the Clarity Supplement (Exhibit B). This MOU formalizes and establishes the terms of an effective, cooperative effort of the Adaptive Management Committee to implement the Grand Lake Clarity narrative standard (see V.A.).

### III. TERM

Active participation in adaptive management will commence no later than April 15, 2016, and shall remain in effect until January 1, 2022. This MOU may be extended by mutual agreement of Reclamation, Northern Water and the West Slope until Reclamation issues its decision document upon completion of the NEPA process described above (at II). The MOU implements an interim process while Reclamation and Northern Water complete their efforts as defined in the Clarity Supplement referenced (Exhibit B).

### IV. ADAPTIVE MANAGEMENT COMMITTEE

- A. **Representation.** Each Party shall be a member of the AMC.
- B. **Participation in AMC meetings.** Multiple representatives of each Party may attend and participate in the AMC meetings, as it is expected that the Adaptive Management process will rely on multiple areas of expertise. However, each Party shall reconcile internal differences and present its unified position to the AMC. The Parties' positions may differ.
- C. **Stakeholders.** Stakeholders in addition to the Parties must be governmental officials acting in their official capacities and may include, but are not limited to, one representative each from the Western Area Power Administration, U.S. Forest Service, Rocky Mountain National Park, Colorado Parks and Wildlife, Town of Grand Lake, Larimer County and Northern Water's Municipal Subdistrict.

### V. IMPLEMENTATION

- A. **Narrative Standard.** This MOU is to implement the WQCC's narrative water quality standard:

"The highest level of clarity attainable, consistent with the exercise of established water rights, the protection of aquatic life, and protection of water quality throughout the Three Lakes system."

5 CCR 1002-33, Numeric Standards Table, at p. 13 (June 30, 2015).

- B. **Clarity Goals.** The annual Clarity Goals for Grand Lake from July 1 through September 11 are an average Secchi depth of 3.8 meters and a minimum Secchi depth of 2.5 meters. The Clarity Goals are intended to guide the adaptive management process established by and implemented through this MOU.

### C. Grand Lake Clarity Operational Planning

1. **Preparation of Grand Lake Clarity Operational Plan.** On or before June 1 of each year, subject to hydrology, meteorology, and current demands, Reclamation will identify operational scenarios to be modeled and evaluated and will meet with members of the AMC to seek input from individual members on these scenarios.
  - a. Reclamation shall present operational scenarios to the members of the AMC along with the results from the corresponding water quality model runs.
  - b. The members of the AMC shall review the scenarios and provide individual input and feedback on the operational scenarios at the meeting scheduled on or before June 1.
  - c. Reclamation shall consider input provided by members of the AMC, and shall present a Draft Operational Plan and water quality model runs on or before June 15.
  - d. The members of the AMC shall review the Draft Operational Plan and members shall individually provide input to Reclamation.
  - e. Reclamation shall announce to the members of the AMC its Proposed Final Operational Plan on or before June 21.
2. **Deliveries and yield.** C-BT Project deliveries and yield shall be protected.
3. **Water Quality Conditions**
  - a. **Consideration of Water Quality Indicators.** When individual members of the AMC determine on the basis of monitoring, modeling or other analysis that any of the Water Quality Indicators relevant to Grand Lake clarity reach or are expected to reach certain thresholds (as described in i, ii and iii below), such members may provide input to Reclamation. The status of Water Quality Indicators shall be included in the Weekly Summary Forms (as described in Exhibit D).
    - i. **Grand Lake Secchi depth.** The moving average Secchi depth of index sites (Jul 1 to date) in Grand Lake is 3.8 meters or less (Exhibit C).
    - ii. **Dissolved Oxygen (DO).** DO levels in Shadow Mountain Reservoir are 3 mg/L or less at the bottom or DO saturation near the surface exceeds 100% (Exhibit C).

- iii. **pH.** pH in Shadow Mountain Reservoir is greater than 8 S.U. near the surface (Exhibit C).
- b. **Consideration of Water Quality Standards.** The AMC members recognize that C-BT Project operations to meet the Clarity Goals may impact the Three Lakes System and may recommend efforts to minimize exceedances of the water quality standards of the Three Lakes System from July 1 through September 11.
- c. **Shadow Mountain Monitoring.** Monitoring will be carried out as explained in Exhibit C. Northern Water will make every effort to maintain the monitoring buoys in Shadow Mountain Reservoir but adjustments may be necessary in the event of an equipment failure. In such event, the AMC members shall recommend monitoring protocols to collect necessary data in support of the AMC process. The Parties recognize that Northern Water is not obligated to replace these buoys if they fail.

The AMC members may adjust the thresholds and selected water quality indicators as mutually agreed by the Parties.

4. **Operational Adaptive Management.** AMC members shall meet in person each year on or before June 1 to discuss the anticipated stream flow and hydrologic forecasts, C-BT Project Operations, and the Northern Water and Municipal Subdistrict delivery obligations. AMC members will provide input to Reclamation for consideration in the operational scenarios (see V.C.1.). The AMC will schedule weekly conference calls during the period of concern for Grand Lake clarity (July 1 and to September 11), and meet as needed to discuss current and foreseeable operational deviations and water quality. During these calls, members may discuss potential operational changes that could help in meeting Clarity Goals.

Members of the AMC may provide input to Reclamation to modify the Operational Plan as needed during the weekly conference calls. Adaptive Management may include Reclamation making changes in the C-BT Project operations or other appropriate measures. Reclamation will evaluate any input provided.

5. **Adaptive Management Record.** A Record of the discussions held during the meetings, input, decisions and objections made shall be maintained and compiled by the AMC. The purposes of the Record include, but are not limited to, (1) assisting in the evaluation of C-BT Project operational approaches to meet the Clarity Goals, as well as effects on Water Quality Indicators (see E.2.a.), and (2) providing feedback for Adaptive Management.

- a. **Meeting Minutes.** The AMC shall record minutes of the meetings held on or about June 1 and June 15.
- b. **Weekly Summary Form.** A Weekly Summary Form shall be prepared by and distributed to the AMC at the weekly meetings. The Weekly Summary Form should include a summary of water quality data, operational parameters of interest, and brief notes on action items and discussion topics from the previous meeting. The information will be presented using a form template such as presented in Exhibit D.
- c. **Comments.** Written comments submitted by any Party shall be attached to the Weekly Summary Form for that meeting.
- d. **Annual Summary.** The AMC shall annually prepare a summary of what it learned about C-BT Project operational approaches to meet the Clarity Goals, as well as effects on water quality, which it shall provide to the Water Quality Control Commission.

## VI. FUNDING

- A. The Parties' initial contribution shall be the services of their staff members.
- B. If the AMC intends to incur any costs associated with the implementation of this MOU, the Parties shall agree in advance to a funding mechanism for such cost(s), consistent with each Party's applicable legal requirements.
- C. This MOU does not assign or allocate responsibility for funding implementation of any measures related to the Adaptive Management process. Without acknowledging or admitting such responsibility, the Parties agree to work together to address implementation of measures in support of the Adaptive Management Process, such as monitoring and reporting costs and securing adequate sources of funding therefor.
  1. Any agreement with consultants shall expressly recognize and implement such limitation.
  2. The obligations of Grand County, the River District, NWCCOG and Northern Water shall not constitute a general obligation, indebtedness, or multiple fiscal year direct or indirect debt or other financial obligation whatsoever, within the meaning of the Constitution or laws of the State of Colorado.
  3. All public funding shall be subject to annual appropriation.
- D. Northern Water has a contractual relationship with the United States as defined by its 1938 Repayment Contract and related documents. Nothing herein changes Northern Water's obligations as defined by that contract and related documents, and Northern Water's commitments under this MOU are separate from Northern Water's obligations under that contract and related documents.

**VII. WINDY GAP FIRING PROJECT 1041 PERMIT**

Grand County hereby acknowledges and confirms that execution of this MOU by the Parties satisfies the portion of Condition 7 of the 2012 Permit that requires execution of the "Clarity MOU" before the 2012 Permit is effective. This MOU also replaces the Umbrella Agreement referred to on the list of documents attached to the 2012 Permit.

**VIII. MODIFICATION**

No modification or waiver of this MOU or any covenant condition or provision contained herein shall be valid unless approved in writing by Reclamation, Northern Water and the West Slope.

**IX. NO WAIVER**

The Parties acknowledge that there are differences of opinion regarding the scope of the obligations to protect water clarity in Grand Lake created by Senate Document 80, the Clarity Supplement, and the Colorado Clarity Standard Process. These issues have not been litigated. The Parties agree that in entering into this MOU and not litigating or otherwise objecting in any form to the legal issues specified above, that this MOU shall never give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual and legal position regarding the Parties' respective positions regarding Grand Lake clarity and the Parties' respective interpretations of Senate Document No. 80, the 1938 Repayment Contract, Reclamation Law, or Colorado law. The Parties further agree that they do not intend this MOU to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The Parties expressly reserve their rights to assert any legal or factual position or challenge the legal or factual position taken by any other party on any other matter.

**X. BINDING AGREEMENT**

This MOU shall be binding upon the Parties, and their respective successors or assigns. The Parties' rights and obligations under this MOU may not be assigned without the express written consent of Reclamation, Northern Water and the West Slope.

**XI. ENTIRE UNDERSTANDING**

This MOU is the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever, unless embodied herein in writing.

**XII. THIRD PARTIES**

- A. This MOU does not create, and the Parties do not intend to create, in any other individual or entity the status of third-party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties and obligations documented in this MOU shall operate only between the Parties to this MOU, and shall inure solely to the benefit of the Parties to this MOU.
- B. The provisions of this MOU are intended only to assist the Parties in determining or performing their obligations under this MOU.
- C. This MOU does not and shall not be deemed to confer upon or grant to any third-party any right enforceable at law or equity arising out of any term, covenant, or condition herein or the breach thereof.

**XIII. NO RIGHTS AGAINST THE UNITED STATES**

This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities its officers, employees, or agents, or any other person.

**XIV. SEVERABILITY**

In case one or more of the provisions contained in this MOU, or any application hereof, shall be invalid, illegal, or unenforceable in any respect the validity, legality and enforceability of the remaining provisions contained in this MOU and the application thereof shall not be in any way affected or impaired thereby.

**XV. COMPLIANCE WITH LAWS**

At all times during the performance of this MOU, the Parties shall strictly adhere to all applicable federal, state and local laws, rules, and regulations that have been or may hereafter be established.

**XVI. SOVEREIGN IMMUNITY**

The Parties do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

**XVII. EFFECT ON OTHER AGREEMENTS**

Nothing in this MOU affects contracts or other agreements that may exist between any combinations of the Parties.

**XVIII. EFFECTIVE DATE**

This MOU shall become effective on the date upon which it has been signed by the last Party to sign although a majority of the Parties may agree to implement this MOU if the signature of any other Party(s) is a mere formality, provided, however, this MOU shall not become effective unless and until the Water Quality Control Commission amends the existing numeric clarity standard, 5 CCR 1002-33 (June 30, 2015), to an average Secchi depth of 3.8 meters and a minimum Secchi depth of 2.5 meters from July 1 through September 11, with a delayed effective date of January 1, 2022.

**XVIII. WEST SLOPE APPROVALS**

When West Slope approval or consent is required, the West Slope, shall develop a unified position and Grand County, NWCCOG and the River District agree to execute any required documents consistent with that position.

IN WITNESS WHEREOF, the Parties hereto have signed this MOU effective as of the date and year written above.

**BUREAU OF RECLAMATION**

By: \_\_\_\_\_  
Jacklynn L. Gould, Area Manager

Date: \_\_\_\_\_

**NORTHERN COLORADO WATER CONSERVANCY DISTRICT**

By: Eric Wilkinson  
Eric Wilkinson, General Manager

Date: 2/14/2016

**COLORADO RIVER WATER CONSERVATION DISTRICT**

By: Eric Kuhn  
Eric Kuhn, General Manager

Date: 1/21/16

**NORTHWEST COLORADO COUNCIL OF GOVERNMENTS**

By: \_\_\_\_\_  
Karn Stegelmeier, NWCCOG Chair

Date: \_\_\_\_\_

**GRAND COUNTY BOARD OF COUNTY COMMISSIONERS**

By: E. Jane Tollett  
E. Jane Tollett, Chairman

Date: 2/2/2016

Attest: Sara L. Rosene  
Sara L. Rosene, Clerk and Recorder

Date: \_\_\_\_\_

**LIST OF EXHIBITS**

EXHIBIT A: pdf of SD80

EXHIBIT B: Clarity Supplement

EXHIBIT C: Secchi, DO and pH monitoring/ Secchi Monitoring Protocol Attached

EXHIBIT D: Form Template

## QQ BILL SUMMARY

Feb. 25, 2016

### HOUSE BILLS.

#### **HB 16-1004. Adding measureable goals and deadlines to Colorado's Climate Action Plan.**

Sponsored by Reps. **Winter & Arndt.**

- Adds a requirement that updates to Colorado's Climate Action Plan contain measureable goals and deadlines to meet those goals, along with updates as to the progress towards those goals. The bill does not specify any specific goals or deadlines.
- Rationale for QQ support: Bill would strengthen efforts to account for predicted future climate changes that could affect water quality and quantity in the headwaters in the future, in line with QQ policy to influence water policy to plan for and protect future West Slope water quality and water needs.
- **QQ recommended position: Support.**

#### **HB 16-1005. Allowing residential rain barrels for non potable outdoor uses,** sponsored by Reps. **Esgar & Danielson,** Sen. **Merrifield.**

- Allows residential homes and multi-plexes with 4 or less attached homes to use 2 rain barrels totaling 110 gallons maximum storage for the harvesting of rain water, with the Department of Health and Environment developing a set of best practices.
- Rationale for QQ support: Bill would provide an educational opportunity to headwaters water users and metropolitan water users on their outdoor water usage as compared to their outdoor watering needs, in line with QQ education policies both about water quality in the headwaters and reducing consumption of TMD water on the east slope.
- **QQ position: Support.**

#### **HB 16-1109. Stating limits on federal agency ability to impose conditions on water rights owner because of Colorado water law.** Sponsored by **Reps. Becker J. and Becker K.,** Coram, Brown, Buck, Dore, Lebsock, Mitsch Bush, and **Sens. Sonnenberg and Donovan,** Baumgardner, Cooke.

- Bill's first section is a legislative declaration of the basic tenets of Colorado Water.
- Section 2, the "Colorado Water Rights Protection Act," has two main parts: (1) a legislative declaration of "Colorado water law as applied to the United States;" and (2) instruction that the state engineer and division engineers shall not enforce or administer efforts by the US Forest Service or BLM to do the following:
  - Require any transfer of title to the USFS or BLM or "restrict the use or alienability" of the water right as a condition to a right of way, special use permit, or other authorizations; or
  - Require a 3<sup>rd</sup> party supplying water to a federal special use permittee to supply such water for a set period of time.
- Both sections of the bill have provisions protecting the legal authority of the federal government to impose bypass flow requirements.

- **QQ recommended position: Monitor.** We have heard from QQ members both in support and with concerns over this bill so recommend a neutral position.

**HB 16-1228. Alternate transfer mechanism permitted renewable one-year transfers of a portion of an agricultural right.** Sponsored by **Reps. Arndt and Becker, J., Brown; Sen. Donovan.**

- Similar bills were introduced in the Legislature the last two years but failed in committee. QQ supported this bill both years.
- Allows an agricultural water rights holder to change an absolute decreed agricultural water right to what is called an “Agricultural Protection Water Right.” This new type of water right would allow up to 50% of an agricultural water right to be transferred to any beneficial use through a renewable one-year lease, loan, or exchange. The bill does not require a water rights holder to specify a specific beneficial use for that transferred water in water court, but the State Engineer must approve the unspecified use. To engage in this transfer, the water rights owner must have a substitute supply plan in place and conform to a lengthy set of other conditions:
  - o The remaining agricultural water right must remain in agricultural use on the property associated with the original decree;
  - o Ownership of the water right must remain with the original owner who applied to change the water right;
  - o The owner must participate in a conservation program or water banking program to conserve the water right; and
  - o The water to be leased, loaned or exchanged may not be applied outside of the water division with jurisdiction over the location of historical consumptive use.
- Note: The River District board opposes this bill for similar reasons they have opposed in previous years. They are concerned that this bill would increase costs to other water rights holders by multiplying the need to object to changed uses of a water right that do not specify where, when or how the changed use will occur.
- Rationale for QQ support: This bill increases flexibility with existing water rights and may help reduce or minimize Front Range dependency on West Slope water resources, in line with QQ policies. In line with the Principles for the Water Plan, this bill also helps individual basins meet their own water supply needs before looking to a new TMD or another Basin for those needs.
- **QQ recommended position: Support.**

**HB 16-1255. Methods to manage Forests to Improve Water Supply Conditions.** Sponsored by **Rep. Coram & Vigil.**

- Part 1 directs the State Forest Service to work with the USFS on a series of pilot projects to “implement forest management treatments that improve forest health and resilience and supply forest products to Colorado businesses.” The State Forest Service currently receives one million dollars annually for projects with the USFS; this bill directs that \$200,000 would be spent specifically on these pilot projects.
- Part 2 commissions a study with the State Forest Service and CWCB to study forest management in protecting and managing Colorado’s water resources, including analyzing the costs if proper forest management does not occur and a forested area burns and benefits of completing forest management treatments.

- Part 3 creates a 24-person forest health advisory council to advise the State Forest Service.
- **No position recommended.**

**HB 16-1256. South Platte Water Storage Study.** Sponsored by **Rep. Brown; Sen. Sonnenberg.**

- Directs the CWCB to study the amount of water passing into Nebraska in excess of the South Platte River Compact and possible locations for water supply projects along the main stem and tributaries of the South Platte. The \$250,000 study will be funded from the severance tax fund. Representative Brown stated at Water Congress that this source of funding is open for discussion, and he is meeting with
- Rationale for QQ support: This bill encourages the Front Range to solve their own water problems before looking to Colorado River Basin water, in line with QQ principles for the Colorado Water Plan.
- **QQ recommended position: Support.**

**HB 16-1283. Water Loss Audit Report.** Sponsored by **Rep. KC Becker.**

- Requires any “covered entity” to complete a water loss audit report and submit it to the CWCB annually, starting June 30, 2018. A covered entity is defined in statute as a public entity that provides at least 2,000 acre feet of water per year to its customers.
- Instructs CWCB to develop guidelines for the required water loss audit report, consistent with the methodology developed by the American Water Works Association (AWWA), and to develop a “score” in the audits that covered entities should achieve starting no earlier than 2020.
- Allows the CWCB to use water efficiency grants to provide support for completing the water loss audits, and asks for \$150,000 per year for three years to cover that expense from the drinking water revolving fund.
- Rationale for QQ support: This bill may provide additional water efficiency across the state, in line with QQ policies to improve conservation measures and advocate for “smart growth.”
- **QQ recommended position: Support.**

## **SENATE BILLS.**

**SB 16-021. Designating “Public Lands Day.”** Sponsored by **Sens. Donovan, Aguilar, Guzman, Heath, Hodge, Johnson, Jones, Kefalas, Kerr, Merrifield, Newell, Steadman, Todd and Rep. Mitsch Bush.**

- Bill designates the third Saturday in May (amended) as “Public Lands Day” in Colorado.
- Passed Senate State Affairs Committee with some amendments to the legislative declaration hinting at different political agendas (multiple uses, wilderness, and national monuments, for example). Several groups have voiced concerns with these amendments and a desire to have them removed from the bill.

- Rationale for QQ support: This bill is in line with QQ education policy to raise awareness of QQ's economic link to water and public lands.
- **QQ recommended position: Support.**

**SB 16-128. Allowing certain amendments to water rights decree without reopening entire decree.** Sponsored by **Sen. Hodge, Rep. Arndt.**

- Allows a water judge or any party to invoke retained jurisdiction to amend a decree for augmentation or substitute water supply. An amendment to a portion of an augmentation or substitute supply plan reopens only that portion of the plan; the entire decree would not be reopened.
- The River District discussed this bill on their board phone call today, and several board members expressed concerns that the bill is unclear whether any party or any aggrieved person could request to open up a decree, and also whether there is a set amount of time for the court to retain jurisdiction and open up a decree or whether the period of time was limited. They decided to seek amendments to get some of those ambiguities resolved (and prefer that the opening up of the decree be limited to the water rights holder). Their position is to amend the bill.
- **QQ recommended position: Monitor.**

**SB 16-129. Changing Colorado Oil and Gas Commission's purpose to "administer" oil and gas development instead of "foster."** Sponsored by **Sen. Jones, Rep. Arndt.**

- Change legislative declaration of the purpose of the COGCC to administering oil and gas development instead of fostering that development.
- This is a recommendation from the 2013 Governor's Task Force that was approved by 13 of the 21 members of the taskforce (which was not enough to move forward as a formal recommendation from the Taskforce).
- Rationale for QQ support: The term "foster" often provides ammunition for preemption arguments against local government authority to regulate oil and gas, in contrast to QQ policies to protect local authority to regulate. The bill also would reduce conflict that currently exists by tasking an agency with both fostering and regulating oil and gas development.
- **QQ recommended position: Support.**

**SJM 16-001. (Senate Joint Memorial to US Congress). Urging Congress to pass Good Samaritan legislation.** Sponsored by **Sen. Roberts, Reps. Coram & Mitsch Bush.**

- Memorial begins with "whereas" clauses describing the imperative for protecting voluntary reclamation of abandoned hard rock mines from facing full liability, and ends by urging the US Congress to pass such legislation, called Good Samaritan legislation.
- Rationale for QQ support: Abandoned hard rock mines affect water quality and riparian health in much of the QQ region, and this bill would provide additional tools to address these issues.
- **QQ recommended position: Support.**

## **POTENTIAL BILLS & BILL TOPICS:**

### **River District bill to allow taxing subdistricts within the RD region.**

This is the description of the bill from Chris Treese:

This bill comes from the River District board's consideration of what needs to happen next and how we can help realize the various projects, plans, and programs outlined in the Basin Implementation Plans. Additionally, recognizing that different basins are at varying levels of readiness for BIP implementation and the River District's size and diversity (all of three and a piece of a fourth RoundTable), our board wants a practical way to create subdistricts that facilitates matching project/program beneficiaries with responsibility for implementation.

The River District is working on language and expects the bill to be introduced later this week or early next week.

### **Water Conservation in Master Plans bill.**

Currently, state statute lists many topics that municipal and county master plans may consider. The Legislative Committee for the American Planning Association is working with several legislators on a late bill that would add to this permissive list a water conservation element.

### **Correcting broad language of *St. Judes* court case.**

The River District and many others on the Western Slope have voiced considerable concerns about potential fall-out from the Colorado Supreme Court's opinion in the recent *St. Judes v. Roaring Fork Club*, 351 P.3d 422 (Colo. 2015). The language in the opinion is very broad, stating that there may not be a right to divert water for direct flow recreational, piscatorial and aesthetic uses. The dissent states that the majority opinion "abolished a well-established practice of the water courts in granting applications" for such water rights. In fact, earlier cases have established recreation, piscatorial, and aesthetic uses as valid uses for water rights.

St. Judes challenged that the Roaring Fork Club's intended recreational, piscatorial and aesthetic uses for an in-ditch water right were not beneficial uses. The court determined that the water rights were not a beneficial use because they were "passive" uses, not requiring diversion of water, and because the only purpose was the subjective enjoyment of the private guests to the Club.

We have heard that there have been several recent cases in which the CWCB is using the *St. Judes* opinion to challenge in-ditch water rights with recreational, piscatorial or aesthetic uses. Some are concerned that this case could threaten the viability of ushering water downstream from storage through municipal-recreation contracts. Currently, for example, a muni-rec contract shepherds flows from Granby Reservoir and Green Mountain to the Colorado River at the state line to meet the 15-mile reach PBO.

QQ has been involved in ongoing discussions about a potential legislative fix. It is that a legislative fix could be proposed this year as a late bill (or, if not, next year). If the bill moves forward this year, the River District recommends interested parties contribute

some funding towards a contract lobbyist to move the bill forward. We would recommend individual QQ members who are interested consider providing some contribution, and QQ will continue to contribute consultant time to the effort.

A group of attorneys participating in these discussions, an *ad hoc* “working group,” has agreed on bill language that would amend the definition of “beneficial use” in C.R.S. § 37-92-103 to include the capitalized language below (and strike through language as indicated):

(4) "Beneficial use" means the use of that amount of water that is reasonable and appropriate under reasonably efficient practices to accomplish without waste the purpose for which the appropriation is lawfully made. Without limiting the generality of the previous sentence, "beneficial use" includes:

(a) The DIVERSION, impoundment OR RELEASE of water ~~for firefighting or storage~~ for any purpose for which an appropriation is lawfully made, including FIREFIGHTING, recreational, fishery, PISCATORIAL, AESTHETIC or wildlife purposes, AND JUDGMENTS AND DECREES ENTERED PRIOR TO AND AFTER [EFFECTIVE DATE OF BILL] FOR SUCH PURPOSES SHALL BE GIVEN FULL EFFECT AND ENFORCED ACCORDING TO THE TERMS OF SUCH DECREES; . . .

Rationale for QQ support in concept: This bill could serve to protect environmental and recreational flows from the potential negative outflow of the broad language in the *St. Judes* case.

**QQ recommended position: Support in concept and continue to participate in the working group.**

Bill No.	Description	Sponsor	Status	Calendar ed	Notes	Recommended Position
<b>HOUSE BILLS</b>						
<a href="#">HB 16-1004</a>	Adding measureable goals and deadlines to Colorado's Climate Action Plan	Reps. Winter & Ardt	Passed House			Support
<a href="#">HB 16-1005</a>	Allowing for residential rainwater collection from rain barrels	Reps. Esgar & Danielson and Sen. Merrifield	2nd Reading in House			Support (official position)
<a href="#">HB 16-1109</a>	Stating limits on federal agency ability to impose conditions on water rights owner because of Colorado water law	Reps. Becker, J and Becker, K, Coram, Brown, Buck, Doe, Lebsock, Mitsch Bush, and Sens. Sonnenberg and Donovan, Baumgardner, Cooke	House Ag	7-Mar		Monitor
<a href="#">HB 16-1228</a>	Alternate transfer mechanism permitted renewable one-year transfers of a portion of an agricultural right	Reps. Arndt and Becker, J., Brown; Sen. Donovan	House Ag	Feb. 29		Support
<a href="#">HB 16-1255</a>	Methods to manage Forests to Improve Water S	Reps. Coram & Vigil	House Ag	Feb. 29		No position
<a href="#">HB 16-1256</a>	South Platte Water Storage Study	Rep. Brown & Sen. Sonnenberg	House Ag	2-Mar		Support
<a href="#">HB 16-1283</a>	Water loss audit report required	Rep. KC Becker	House Ag	7-Mar		Support
<a href="#">HJR 16-1002</a>	Dam Restoration Access to Federal Lands	Reps. Coram & Mitsch Bush, Sens. Baumgardner, Roberts	Passed House & Senate; signed by Speaker of the House		WRRC	Support
<b>SENATE BILLS</b>						
<a href="#">SB 16-021</a>	Designating "Public Lands Day"	Sen. Donovan, Rep. Mitsch Bush	Senate 2nd reading			Support
<a href="#">SB 16-128</a>	Allowing certain amendments to water rights decree without reopening entire decree	Sen. Hodge Rep. Arndt	Senate Ag			Monitor

## NWCCOG Water Quality/Quantity Committee

## 2016 Bills of Interest

<a href="#">SB 16-129</a>	Changing Colorado Oil and Gas Commission's purpose to "administer" oil and gas development instead of "foster."	Sen. Jones, Rep. Arndt	Senate Ag			Support
<a href="#">SJR 16-003</a>	Water Projects Eligibility List	Sen. Sonnenberg, Rep. Vigil	<i>Passed Senate &amp; House</i>	Jan. 28		Support
<a href="#">SJM 16-001</a>	Urging US Congress to pass Good Samaritan legislation	Sen. Roberts, Reps. Coram & Mitsch Bush	House Ag; Passed Senate			Support